IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2100 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

ADARSH PAPER BAG CO.

Versus

SALES TAX OFFICER

Appearance:

1. Special Civil Application No. 2100 of 1988
MR RD PATHAK for Petitioner No. 1
MR UDAY R BHATT, AGP for Respondent No. 1-5

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 15/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, the petitioner had earlier challenged the

vires of the provisions of Section 47(4A) of the Gujarat Sales Tax Act, 1969. The petition was filed and admitted in the year 1988. However, when the petition reached hearing before the Court on 14.2.2002, the learned counsel for the petitioner withdrew the challenge to the vires of the aforesaid provisions and, therefore, the petition is directed to be listed before the regular Bench taking up tax matters. That is how the matter is now before us.

2. The petitioner's challenge in the petition is now confined to the order of assessment dated 9.4.1980 passed by the Sales-tax Officer (2), Enforcement, Division-3, Bhavnagar, respondent No. 1 herein, as well as the order dated 10.8.1987 passed by the Gujarat Sales-tax Tribunal at Ahmedabad partly allowing the petitioner's appeal and partly dismissing the said appeal against the first appellate order dated 24.8.1984 passed by the Assistant Commissioner of Sales-tax (Appeals-10), respondent No. 3 herein, arising from the assessment order dated 9.4.1980 passed by respondent No.1.

3. The facts leading to filing of this petition, as found by the Tribunal, are as under :-

3.1 The petitioner is a manufacturer of paper bags of craft paper. A surprise visit was paid on 20.10.1975 and certain items were seized pertaining to S.Y. 2031. They were serial number 17 to 38. After detailed verification of the seized items, certain additions were made by the Sales Tax officer. From seized item Nos. 24 and 29, suppressed sales were estimated at Rs.4,500/- and Rs.2,946/- respectively by the Sales Tax Officer and from seized item Nos. 32 and 33, suppressed sales were estimated at Rs.4,57,880/- against the actual suppression of Rs.1,57,780/- on the ground that some "C" series bills were noted by Sales Tax Officer ranging as C-80, C-81, C-88, C-94 and c-97 and the suppressed sales in relation to the regular bills issued was noticed at Rs.15,004/= from the file bills and taking the ratio average of Rs.3,001/= per bill suppressed sales of the entire series of "C" 1 to 100 were estimated at Rs.3,00,100/- taking into consideration the principles of best judgment assessment. Then, some purchases were also added based on these submissions on estimation basis as this was the sale of manufactured goods. Further penalties were also levied at Rs.9,000/- under Section 45(2)(c), Rs.1,500/under Section 46(2) and Rs.6,325.42 under Section 45(6) of the Act.

3.2 Aggrieved by the aforesaid order of the Sales-tax

Officer, the petitioner preferred the first appeal before the Assistant Commissioner of Sales-tax to reconsider the best judgment assessment based on the missing "C" series and reduction of penalties. The Assistant Commissioner, however, dismissed the appeal.

3.3 The petitioner, therefore, carried the matter in second appeal before the Tribunal. After hearing the learned advocate for the petitioner before the Tribunal and the learned Departmental Representative, the Tribunal passed the following order:-

"7. In view of the above, this second appeal is partly allowed and the decisions are finally summarized as under :-

(i) The estimated suppression on account of "C" series book is reduced from Rs.3,00,100/= to Rs.2,25,975/=.

(ii) Retable reduction of estimated purchases is also done in view of the reduction in estimated sales.

(iii) Penalty under Section 45(2)(c) is reduced from Rs.9,000/= to Rs.2,000/=.

(iv) Penalty under Sections 46(2) and 45(6) of the Act will be reduced proportionately. Tax and penalty, if any, paid in excess shall be refunded to them."

Pursuant to the aforesaid order of the Tribunal, respondent No.2 - Sales-tax Officer (Enforcement), Division-3, Bhavnagar issued demand notice dated 21.3.1988 (Annexure "A/3").

4. The aforesaid judgment of the Tribunal and the subsequent demand notice are challenged in this petition under Article 226 of the Constitution.

5. At the hearing today, Mr RD Pathak, learned counsel for the petitioner has raised the following contentions :-

(i) The order dated 9.4.1980 passed by respondent No.1-Sales-tax Officer, Enforcement, Division-3, Bhavnagar was without jurisdiction as the regular Assessing Officer in the petitioner's case was respondent No.2-Sales-tax Officer, Division-4,

Bhavnagar as also there was no order of the Commissioner under Section 82 of the Gujarat Sales-tax Act, 1969 (hereinaafter referred to as "the Act") for transferring the proceedings from respondent No. 1 to respondent No. 2.

(ii) The assessment order under challenge is for S.Y. 2031 corresponding to the period - 14.11.1974 to 3.11.1975. The four year time limit for completion of assessment expired on 20.10.1979. However, the impugned order came to be passed by respondent No. 1 on 9.4.1980. In the meantime, of course, there was an order dated 9.10.1979 passed by the Deputy Commissioner of Sales-tax under the first proviso to sub-section (1) of Section 42 of the Act. That was an order for staying the assessment proceedings till 7.11.1980 corresponding to Aso Vad Amas of S.Y. 2036. However, that was the order of stay of the assessment proceedings and, therefore, the impugned assessment order passed on 9.4.1980 during operation of the said stay was illegal and without jurisdiction.

(iii) The demand notice dated 21.3.1988 (Annexure "A/3") issued by respondent No. 1 is also illegal as the interest has been charged in contravention of the provisions of Section 47(4A) of the Act.

6. On the other hand, Mr UR Bhatt, learned AGP for the respondent authorities has opposed the petition and made the following submissions :-

(i) In view of the fact that the Enforcement Directorate of the Sale-tax having jurisdiction over Bhavnagar District had carried out the raid at the petitioner's premises through respondent No. 1, respondent No. 1 did have the jurisdiction over the petitioner's case and, therefore, no recourse was required to be taken under Section 42 of the Act.

(ii) The order passed under the first proviso to Section 42 was, for all intents and purposes, the order for extending the time limit for completion of the proceedings on the ground that the investigation in the petitioner's case pursuant to the raid was going on and, therefore, the assessment order passed on 9.4.1980 within the extended time limit of 7.11.1980 was perfectly legal and valid.

(iii) Interest has been levied in accordance with the provisions of Section 47(4A) of the Act as the Assessing Officer had already passed the assessment order on 9.4.1980 and the demand notice dated 9.4.1980 was also issued. Therefore, the department was justified in charging interest for the period from the date of expiry mentioned in the demand notice dated 9.4.1980 till the date of payment, subject to the modification made by the Tribunal as per its order dated 10.8.1987.

7. Having heard the learned counsel for the parties, we proceed to deal with the contentions raised on behalf of the petitioner. As far as the first contention is concerned, Mr Pathak has invoked the provisions of Section 82 which read as under :-

"82. Powers to transfer proceedings.- The Commissioner may after due notice to the parties, by order in writing transfer any proceedings or class of proceedings under any provision of this Act from himself to any other officer and he may likewise transfer any such proceedings (including a proceeding already transferred under this Section) from one such officer to another or to himself."

It is submitted that the petitioner was not given any notice nor did the Commissioner pass any order under Section 82 for transferring the proceedings from respondent No. 2, who is the regular Assessing Officer, to respondent No. 1 who had passed the impugned assessment order on 9.4.1980. We are, however, not in a position to accept the above contention for the simple reason that the impugned assessment order was passed by respondent No. 1 being an officer of the Enforcement Directorate having jurisdiction over the area including Bhavnagar District. Section 27 of the Act conferring jurisdiction on the authorities reads as under:-

"27. Sales Tax Authorities.

(1) For carrying out the purposes of this Act, the State Government shall appoint as Officer to be called the Commissioner of Sales Tax.

(2) To assist the Commissioner in the execution of his functions under this Act, the State Government may appoint Additional Commissioners of Sales Tax (if any), and such number of, -

(a) Deputy Commissioners;
(b) Assistant Commissioners;
(c) Sales Tax Officers, and
(d) Other Officers and persons, and give them such designation (if any), as the State Government thinks necessary.

(3) The Commissioner shall have jurisdiction over the whole of the State of Gujarat ... ...

(4) The Commissioner shall have and exercise all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act, ...

(5) ... ...

(6) Assistant Commissioners, Sales Tax Officers and other Officers shall within their jurisdiction exercise such of the powers and perform such of the duties of the Commissioner under this Act, as the Commissioner may, subject to such conditions and restrictions as the State Government may by general or special order impose, by order in writing delegate to them either generally or as respects any particular matter or class of matters."

9. It is thus clear that the Commissioner has been vested with the jurisdiction over the whole of the State of Gujarat and use those powers with the assistance of various officers including Sales Tax Officers. The assertion of the learned AGP about delegation of powers of the Commissioners to the Officers in the Enforcement Directorate is not disputed. The Enforcement Directorate having jurisdiction over the whole of the State of Gujarat had carried out the raid through respondent No. 1-Sales Tax Officer, Enforcement Division at Bhavnagar. Therefore, we do not find force in the contention of Mr Pathak that respondent No. 1 did not have any jurisdiction to pass assessment order and that the assessment order passed by respondent No. 1 was without jurisdiction. The first contention is, therefore,

rejected.

10. Coming to the second contention, the submission is based on the language of Section 42 read with the proviso thereto which reads as under :-

"42. Time limit for completion of assessment.

(1)(a) No order of assessment for a year or part of a year shall be made under sub-section (3) or (4) of section 41 at any time after the expiry of two years from the end of the year in which the last monthly, quarterly or as the case may be, annual return is filed.

(aa) Notwithstanding the expiry of the period in clause (a) an order of assessment for Samvat Year 2038, calendar year 1982 or, as the case may be, financial year ending on the 31st March, 1983, or part of such year may be made under sub-section (3) or (4) of section 41 at any time not later than the end of Samvat Year 2042, calendar year 1986 or, as the case may be, financial year ending on the 31st March, 1987.

(b) Where the Commissioner issues a notice under sub-section (6) of section 41 to any dealer for assessment of tax in respect of any period, no order of assessment shall be made for such part of the period, if any, as is prior to,-

(i) ... ...

(ii) a period of four years ending on the last date as aforesaid, in any other case;

Provided that for the purpose of this section if it is considered necessary so to do, the State Government may, subject to such conditions as it may deem fit, and the Commissioner may, subject to such conditions as may be prescribed, by a general or special order, stay, either generally or for a specified period, the assessment proceedings of a dealer or class of dealers;"

The contention is that the order of the

Commissioner under the first proviso was only for staying the proceedings and not for extending the time limit for completing the assessment proceedings.

In this connection, reference may be made to the decision of the Apex Court in Fag Precision bearings vs. Sales Tax Officer, (1997) 104 STC 143. In the said decision also, the Supreme Court has considered the scheme of Section 42 of the Gujarat Sales Tax and again this Court also had on occasion to consider the said section and its proviso in Special Civil Application No. 12 of 1987 decided on 9.7.2002. A perusal of the decisions clearly indicates the first proviso to Section 42 purports to state as to in which circumstances the Government can extend the period for completing the assessment proceedings. The order of stay is, therefore, for intents and purposes, an order extending the period stipulated for completing the assessment. Hence, the order passed by the assessing officer within such extended time limit must be held to be legal and cannot be said to be illegal on the ground that the assessment order was passed during operation of the stay. The second contention is, also therefore, rejected.

11. Coming to the last contention, it is submitted by Mr Pathak that since the Sales-tax Tribunal finally decided the matter on 10.8.1987, the authorities were not justified in charging any interest for any period prior thereto.

The contention overlooks the fact that the Assessing Officer, respondent No. 1 herein, had already passed the assessment order on 9.4.1980 and also issued consequential demand notice dated 9.4.1980 requiring the petitioner to pay additional tax on the basis of the suppressed sales amounting to Rs. 3 lacs. All that the Tribunal had done vide its order dated 10.8.1987 was to reduce the amount of suppressed sales from Rs. 3,00,100/to Rs.2,25,975/-. Hence, the Tribunal did not impose any new liability by the said judgment dated 10.8.1987 but only reduced the petitioner's liability to pay additional tax. Hence, the respondents were justified in levying interest for the period from the date of demand notice i.e. 9.4.1990 pursuant to the assessment order dated 9.4.1980 till the date of payment.

12. In view of the above discussion, we find no merit in any of the contentions raised by the learned counsel for the petitioner. No other contentions were urged. The petition is, therefore, dismissed.

Rule is discharged with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-